



**Republican
National
Committee**

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COUNSEL

May 30, 2014

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6780

Dear Mr. Jordan:

On April 14, 2014, the Republican National Committee ("RNC") and Treasurer Tony Parker in his official capacity were notified of a complaint filed by Garrett Arwa, Executive Director of the Michigan Democratic Party. As explained below, no action can be taken against the RNC on the basis of this complaint, and it is unclear upon what legal basis we were even notified of the complaint. While the RNC is mentioned in the complaint, there is no allegation of wrongdoing by the RNC in a complaint clearly directed at the alleged violations of other entities.

I. Introduction

Pursuant to 2 U.S.C. §437(g)(1)(1), any person who believes that a violation of the Act has occurred may file a complaint with the Commission. 2 U.S.C. §437g(a)(1) directs that "[w]ithin 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation." Specifically, 11 C.F.R. §111.5(a) provides that upon receipt of a complaint, the General Counsel shall review the complaint for "substantial compliance with the technical requirements of 11 C.F.R. 111.4," and if it complies with those requirements shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint." However, the complaint in this matter does not even comply with the requirements of 11 C.F.R. §111.4 with respect to the RNC.

11 C.F.R. §111.4(d) provides that a complaint should clearly identify as a respondent each person or entity who is alleged to have committed a violation; be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of statements if not based upon personal knowledge; contain a clear and concise recitation of the facts which describe a violation of statute or regulation; and be accompanied by any documentation supporting the facts alleged. However, the complaint in this matter falls well short of that standard because it does not clearly identify the RNC as a respondent, and it does not contain facts which describe a violation of statute or regulation by the RNC. The complaint's failure to meet the technical requirements of the Act is the natural consequence of the absence not only of any violation by the RNC but likely also of any effort by complainant to even allege such a violation.¹ The RNC is not a proper respondent in this matter.

II. The Complaint Does Not Even Purport to Name the RNC as a Respondent

First, and critically, the complainant does not "clearly identify" the RNC as "a respondent who is alleged to have committed a violation."² The complaint in this matter was filed against "Terri Lynn Land, her campaign committee... [and] purportedly 'independent outside groups.'"³ The complaint makes factual assertions about "discussions with 'Super PACs,' to obtain a commitment from these outside groups to support her campaign,"⁴ and requests "[f]urther investigation... into Land's campaign discussions with Super PACs and other outside groups."⁵ The RNC is a national party committee, not a "purportedly 'independent outside group.'" Land's comments quoted in the complaint illustrate that this is a case about Super PACs, not a national party committee; as she said, "[i]t's probably a \$20 million campaign, but the reality is that we have got new folks out there who are raising money. And that's the Super PACs."⁶

The RNC is not a "Super PAC" or 501(c)(4) or an "outside group," as those terms are used by the complainant. The complainant describes Super PACs as political committees "formed in the wake of the *Citizens United* decision... that can take unlimited contributions and contributions from corporations to fund their election activities, but only because they operate completely independent of candidates and their campaigns."⁷ The RNC is a political party committee that is

¹ The complainant's own press release regarding the filing of the complaint in this matter illustrates that the complainant was concerned about "whether the Koch Brothers had committed to helping [Land] buy the U.S. Senate seat," and pledged to "tak[e] action to protect Michigan from Ms. Land's scheme to sell off our voice in the U.S. Senate to outside special interest groups." Setting aside the possibility that the complaint was politically motivated, it is clear that the complainant's sole focus was on the question of whether there was illegal coordination between Koch Brothers-controlled entities (which the RNC is not) and Land's campaign. See "MDP to File FEC Complaint Against RNC Committeewoman Terri Lynn Land for Illegal Commitment from Special Interest Super PACs," available at: <http://www.michigandems.com/mdp-file-fec-complaint-against-rnc-committeewoman-terri-lynn-land-illegal-commitment-special-interest-super-pacs/#sthash.MhFZxJgh.dpuf> (accessed May 28, 2014).

² 11 C.F.R. § 111.4(d).

³ MUR 6780, Complaint at 1.

⁴ MUR 6780, Complaint at 1.

⁵ MUR 6780, Complaint at 7.

⁶ Transcribed excerpt from the video cited in the complaint. See MUR 6780, Complaint at 1, n. 1.

⁷ MUR 6780, Complaint at 1.

prohibited from raising or spending any funds that are not subject to the Act's source prohibitions, amount limitations, and reporting requirements. The RNC and its officers, agents, and employees are prohibited from soliciting for or directing funds to Super PACs, 501(c)(4) organizations and other so-called "outside groups." The *Citizens United* decision cited by the complainant does not allow the RNC to raise and spend unlimited corporate funds on election activities. Moreover, the RNC is not required to "operate completely independent of candidates and their campaigns," which is how the complainant defines the groups that are alleged to have violated the law.⁸ In fact, the Act specifically authorizes the RNC, as a national party committee, to make expenditures that are fully coordinated with the general election campaign of a Federal candidate (commonly known as "coordinated party expenditures").⁹ Moreover, whereas entities organized under section 501(c) are prohibited from making direct contributions to candidate committees, the Act specifically provides that the RNC shares with the National Republican Senatorial Committee a special contribution limit (\$45,400 in 2013-14).¹⁰

In addition to "Super PACs," the complaint also references "[o]ther groups, like 501(c)(4)s [that] can also run campaign ads without even disclosing their donors, again, only if they do so independently."¹¹ However, the RNC is registered under section 527 of the IRS code, not section 501(c), and is required to fully disclose all its donors. And, again, the complaint's characterization of the independence requirement is inapplicable to the RNC.

Thus, it would be absurd to conclude that the RNC, a national party committee, is "clearly identif[ied]" as a respondent in a complaint alleging illegal coordination between a campaign committee and Super PACs and/or 501(c)(4)s (which are required generally to operate independently of a candidate's committee with respect to election-related activities). The RNC is demonstrably different in kind than the groups identified by the complainant as alleged to have committed a violation. This difference is critical, since the lynchpin of the allegations in the complaint is that the Land campaign impermissibly coordinated with groups that are prohibited from coordinating their expenditures with federal candidate committees.

In short, with nothing but passing references to the RNC in the complaint, it is difficult to even see how the RNC can be considered an entity "identified [in the complaint] as a respondent." Merely being referred to in the complaint is insufficient to constitute being "named as a respondent."¹² The complaint does not accuse the RNC of the alleged violations; it simply mentions the RNC in the context of allegations against other potential respondents, and therefore the RNC should be dismissed as a respondent.

⁸ MUR 6780, Complaint at 1.

⁹ See 2 U.S.C. §441a(d).

¹⁰ 2 U.S.C. §441a(h). In fact, on December 31, 2013, the RNC made a \$25,000 contribution to Land's campaign committee, which was reported to the FEC. <http://docquery.fec.gov/cgi-bin/docdev/forms/C00003418/914607/sb/23> (accessed May 28, 2014). No Super PAC or entity organized under section 501(c) could have permissibly made such a contribution.

¹¹ MUR 6780, Complaint at 1.

¹² In this matter, the RNC was notified of the complaint more than two months after it was filed, purportedly because of an "administrative oversight." Letter from Jeff S. Jordan to Anthony W. Parker, dated April 11, 2014, at 1.

III. The Complaint Does Not State Any Conceivable Violation By the RNC

Second, and equally importantly, the complaint contains no "clear and concise recitation of the facts which describe a violation of statute or regulation"¹³ by the RNC. The only facts cited by the complainant with respect to the RNC are references to robocalls and radio ads run by the RNC. But these asserted facts do not describe a violation of statute or regulation by the RNC,¹⁴ "and unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true."¹⁵ This is not an uncommon deficiency for complaints filed under 2 U.S.C. §437(g)(1)(1).¹⁶ Nevertheless, it is clear that with respect to the RNC, the complaint is not in "substantial compliance with the technical requirements of 11 C.F.R. 111.4."

The complaint does not substantially comply with the requirements of section 111.4 with respect to the RNC, as it does not "clearly identify" the RNC as "a respondent who is alleged to have committed a violation," and it contains no "clear and concise recitation of the facts which describe a violation of statute or regulation" by the RNC. "If a complaint does not comply with the requirements of 11 C.F.R. 111.4, the General Counsel shall so notify the complainant and any person(s) or entity(ies) identified therein as respondent(s)... within the 5 day period specified in 11 C.F.R. 111.5(a), that no action shall be taken on the basis of that complaint." 11 C.F.R. §111.5(b). Thus, no action should be taken against the RNC here.

Finally, as both a legal and practical matter, the mere inclusion of a reference to the RNC in the complaint without sufficient specificity of allegation of wrongdoing cannot shift the burden to

¹³ 11 C.F.R. §111.4(d).

¹⁴ Unlike Super PACs (however defined) and 501(c)s, national party committees are permitted to make party coordinated communications, so complainant's implied assertion that coordination between a candidate's committee and "nationwide outside political groups" (including political committees) is a *per se* violation of the Act or Commission regulations is false as applied to national party committees such as the RNC. But in any event, the radio ads and robocalls cited by complainant were not coordinated with the Land campaign. These communications were part of a nationwide campaign to engage voters on the issue of the Affordable Care Act.

¹⁵ MUR 6296 (Kenneth R. Buck, *et al.*), Statement of Reasons of Vice Chairman Caroline Hunter and Commissioners Donald McGahn and Matthew Petersen at 8 (citing MUR 4869 (American Postal Workers Union), Statement of Reasons of Chairman Darryl Wold, Vice-Chairman Danny McDonald, and Commissioners David Mason, Karl Sandstrom, and Scott Thomas (Where a complaint alleged that a labor union impermissibly paid for a mailing endorsing two federal candidates with general treasury funds, but because it was a communication from the union to its members which could be paid for with general treasury funds, the complaint made an unwarranted legal conclusion from asserted facts, and on that basis the Commission found no reason to believe that a violation occurred) and MUR 4850 (Fossella), Statement of Reasons of Chairman Darryl Wold and Commissioners David Mason and Scott Thomas at 2 ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents.")).

¹⁶ See *u.g.*, MUR 6296 (Kenneth R. Buck, *et al.*), First General Counsel's Report at 10 ("Moreover, in order to find coordination based on Morgensen's actions, the facts alleged would need to establish that Morgensen was Buck's or the Committee's agent. The complaint does not allege any facts to suggest that Morgensen was acting as the agent of either."), MUR 6065 (Protect Colorado Jobs, Inc., *et al.*), Statement of Reasons of Vice Chairman Matthew Petersen and Commissioners Caroline Hunter and Donald McGahn at 6 ("The sworn complaint in this matter did not allege a violation of the Act.").

IV. Conclusion

Even assuming that the RNC could be considered a "respondent" in this matter, since the complaint does not allege that the RNC was responsible for the violations alleged in the complaint, and does not assert any facts that would constitute a violation of the Act or Commission regulations by the RNC, there is no basis for the Commission to take any action against the RNC on the basis of the complaint. After all, "the Act's complaint requirements and limits on Commission investigatory authority serve no purpose if the Commission simply proceeds anytime it can imagine a scenario under which a violation occurred."¹⁸ And here the complaint offers no basis for even such imaginings.

Sincerely,



John R. Phillippe Jr.
Chief Counsel

serving as *de facto* complainant."). And the complainant retains the right to file a new complaint that complies with the basic requirements set forth in the Act and Commission regulations.

¹⁸ MUR 6296 (Kenneth R. Buck, *et al.*), Statement of Reasons of Vice Chairman Caroline Hunter and Commissioners Donald McGahn and Matthew Petersen at 8.